

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
City of Alexandria, Virginia)	WT Docket No. 02-55
and)	
Nextel Communications, Inc.)	

TO: Public Safety & Homeland Security Bureau, FCC

REFERENCE: TAM-12043

**PETITION FOR WAIVER
OF THE CITY OF ALEXANDRIA, VIRGINIA**

Pursuant to the Commission's Public Notice, DA 06-2555,¹ and Section 1.925 of the Rules, the City of Alexandria, Virginia ("City") requests a waiver that would permit Nextel Communications, Inc. ("Nextel") to compensate the City for the rebanding of NPSPAC channels not granted Special Temporary Authority ("STA") until after the lifting of the licensing "freeze" for Stage 2 of Wave 1 on December 14, 2006.² The City respectfully requests expeditious treatment of this request because execution or modification of a completed Planning Funding Agreement ("PFA") depends on the Commission's decision.³

Background. The NPSPAC channels temporarily authorized February 7, 2007 as WQJ862 are the same formerly licensed by STA under WQDH919. WQDH919 was first granted STA in August of 2005. That six-month license was extended by another six months in

¹ Released December 20, 2006, hereafter "STA Notice."

² Permanent public safety licensing was suspended, or "frozen," to allow Nextel and licensees maximum flexibility in identifying replacement channels for those given up during reconfiguration. Report and Order, WT Docket 02-55, 04-168, released August 6, 2004, ¶204.

³ The Transition Administrator's ("TA's") Request for Information on the issue is Exhibit A hereto.

February of 2006. In August of 2006, the City sought a second six-month renewal but was advised by the local 800 MHz public safety planning body, Region 20, that it had been instructed not to issue such pre-approvals.⁴ The STA license expired August 28, 2006.

The channel associated with WQDH919 had been recommended for permanent licensing by the Region early in 2005 and an FCC Form 601 was submitted for pre-approval on March 24, 2005. Before the Region could process the City's application, a licensing "freeze" was imposed.⁵ The City nevertheless applied for and received an initial STA license and one renewal before being told by the Region, in August of 2006, that the Region could no longer pre-approve STAs during the freeze.

The STA for WQDH919 expired in that month and was cancelled two months later. Since the lifting of the freeze in mid-December, the Region has filed the City's application for a permanent license for the NPSPAC channels. To allow for a lapse of time in the grant of the permanent license, the City asked for an STA to replace the expired authorization for WQDH919. As noted above, WQGJ862 was issued in February and will expire in August of 2007. This is the period during which the City expects the channels to undergo rebanding. If the permanent license is not granted by August, the City will seek to renew the STA for WQGJ862.

Justification for waiver. Pursuant to Section 1.925 of the Commission's Rules, the FCC may grant a request for waiver if it is shown that (i) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that a grant of

The City's efforts to stay in touch with the Region are illustrated by the e-mail string at Exhibit B hereto. "Ed" is Edward Ryan, Region 20 Chairman.

⁵ Report and Order, Docket 02-55, FCC 04-168, released August 6, 2004, ¶204. The freeze was in aid of rebanding and scheduled to end 30 working days after the conclusion of negotiations in a given wave. One reason for the Region's failure to beat the freeze on applications, such as the City's, pending in 2005 was that the Region expected the licensing window to close in June of that year but it actually closed a month earlier.

the requested waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of a given case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.⁶

With respect to prong (i), manifestly it would frustrate the purpose of the public safety reconfiguration rules if NPSPAC channels already recommended by Region 20 for permanent licensing – a process interrupted by the freeze rule – having operated under STAs for 20 months, were to be denied eligibility for Nextel compensation of their required rebanding. The City’s eligibility would not be questioned but for events over which the City had no control. Accordingly, grant of waiver will serve the public interest.

The STA Notice (at 3) provided the following gloss on general waiver principles, focused on “exceptional cases” in refinement of prong (ii):

[W]e expect that licensees will demonstrate that: (a) the need for the facility could not reasonably have been anticipated before the end of the mandatory negotiation period; and (b) safety considerations dictate that the modified facilities must be activated before band reconfiguration is completed in the relevant NPSPAC region.

Here, the STA channels, under the earlier call sign of WQDH919, had been fully anticipated and approved for permanent licensing before the freeze. When the freeze made permanent authorization impossible, temporary authority was sought and used for two terms. The final of the two terms partly overlapped with the extended mandatory negotiation period. Plainly, the test at (a) is meant to cover surprise requirements that could not have been foreseen. The test is irrelevant to the City’s long-established need for the channels.

The City fulfills the second test at (b). The channels at issue were in use before rebanding began and they must continue to be used. If they are permanently licensed in the near term, there will be no question of their eligibility for compensation from Nextel. Similarly, there

⁶ 47 C.F.R. §1.925(a)(3)

is no question that if the channels were to remain under STA at the time of physical reconfiguration, they would be as entitled to compensation as if permanently licensed.

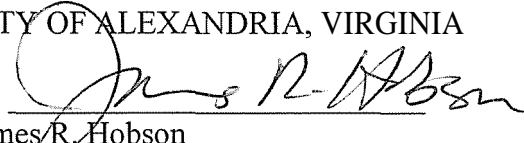
The place to deal with the issue is in the pending PFA and the time is now. This will ensure that the PFA need not be re-opened later and that the compensation question is resolved before the start of FRA negotiations.

The FCC recently clarified that Nextel may offset these STA conversion payments against its anti-windfall obligations to the U.S. Treasury.⁷ Grant of the waiver requested here is reinforced by the Commission's observation, in this letter of clarification at 3, that "the NPSPAC mutual aid channels provide a critical foundation for interoperability among 800 MHz public safety licensees."

Conclusion. For these reasons, the City asks that the channels now operating under STA as WQGJ862 be ruled eligible for Nextel-compensated reconfiguration.

Respectfully submitted,

CITY OF ALEXANDRIA, VIRGINIA

By 
James R. Hobson
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April 12, 2007

ITS ATTORNEY

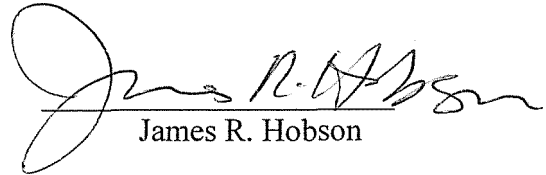
⁷ Letter of February 12, 2007 from David L. Furth of the Public Safety & Homeland Security Bureau to James B. Goldstein of Nextel, 2.

Certificate of Service

The foregoing Petition for Waiver has been served electronically today upon:

menaud@ssd.com
david.fbrth@fcc.gov
Eduardo.Guzman@dbr.com

April 12, 2007



James R. Hobson



March 23, 2007

Mr. William Jenkins
Sprint Nextel
6575 The Corners Parkway
Norcross, GA 30092

RE: PLANNING FUNDING AGREEMENT # DL8910427558
INCUMBENT: ALEXANDRIA, CITY OF, VA PH II
AMOUNT: \$225,866.44

Dear Mr. Jenkins:

The 800 MHz Transition Administrator ("TA") has reviewed this Agreement, submitted to the TA on March 15, 2007, and requires additional information in order to complete its review:

- 1) In its December 20, 2006 Public Notice, DA 06-2555, the FCC provided guidance for when the costs associated with the reconfiguration of a STA would be eligible for reimbursement. The FCC specifically provided that if the STA were issued after the applicable license freeze, the Incumbent would need to file a Request for Waiver seeking eligibility for reimbursement of the costs of reconfiguring the STA.

The City of Alexandria ("Incumbent") currently operates NPSPAC frequencies on WQGJ862, a Special Temporary Authority (STA) that was granted after the expiration of the Wave 1 Stage 2 application freeze. While the call sign is included in this PFA, the TA does not have anything indicating that the Incumbent has filed and been granted the necessary waiver from the FCC. As such, the costs associated with reconfiguring the facilities operating under the STA should be listed as contingent upon the FCC's grant of a Request for Waiver.

To the extent that the Incumbent has filed with the FCC a Request for Waiver, please provide us with a copy. In the event that the Incumbent intends to file a Request but has not yet done so, please provide written confirmation of the Incumbent's intent. The TA is prepared to complete its processing of this PFA upon: (1) receipt of the copy of the Request or written confirmation of intent to file a Request and (2) amendment of Schedule C reflect the contingent nature of the applicable costs.

If the Incumbent does not plan to file a Request for Waiver, please remove the applicable costs from Schedule C and resubmit the Agreement. Irrespective of the intent to file a Request for Waiver, WQGJ862 should remain in the Agreement for purposes of properly licensing the replacement frequencies and accounting for the reconfiguration of the STA.



Transition
Administrator

The Official Reconfiguration Manager

EXHIBIT A-2

Please note that the TA continues to review other aspects of this Planning Funding Agreement and that the TA's final decision requires the resolution of the issue(s) presented in this RFI. Also note that this Agreement remains in RFI status until all issues presented in this - and future RFIs should they be required - are resolved.

Should you have any questions in this matter, please do not hesitate to contact the Transition Administrator at rfpf@800ta.org. Please refer to the Incumbent name and PFA Deal# indicated above for all communications related to this inquiry.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kamesh Mullapudi", followed by a long horizontal line.

Kamesh Mullapudi
Sr. Manager
BearingPoint

EXHIBIT B-1

Dale Johnson. to Ed Ryan, 8/28/06

From: Dale.Johnson@alexandriava.gov
To: kayairwaves@earthlink.net ; ryan@dbm.state.md.us
Sent: Monday, August 28, 2006 12:33 PM
Subject: Re: Alexandria, VA

Ed,

I need a STA approval letter to renew call sign WQDH919. Attached is the old one. Please send to Kay when approved.

I have copied Kay at Airwaves Licensing who will process the paperwork once you have approved it.

Regards,

Dale Johnson
Radio Systems Manager
Office 703-838-6360x1287

Johnson to Ryan, 9/8/06

Ed,

I really need some help on this.

Regards,

Dale Johnson
Radio Systems Manager
Office 703-838-6360x1287

----- Forwarded by Dale Johnson/Alex on 09/08/2006 07:23 AM -----

Dale Johnson exchange with licensing agent, 9/63/06

OK- Send me Ed's letter as soon as you receive it.

Kay

----- Original Message -----

From: Dale.Johnson@alexandriava.gov

To: Airwaves Licensing Assistance

Sent: Wednesday, September 13, 2006 1:22 PM

Subject: Re: STA Approval

Kay,

Mark Mayher from Nextel said it was not needed and he would check with his people. I have not heard anything from him. I would suggest that we submit the application and the letter from ED and let the FCC tell us what to do.

Regards,

Dale Johnson

Radio Systems Manager

Office 703-838-6360x1287